

## **REMARKS**

Initially, Applicants thank the Office for the indication of Allowable subject matter. Applicants also thank the Office for its removal of the previous 35 U.S.C. §112, second paragraph, rejections. Claims 34-63 were pending. Claims 34-61 were rejected. Claims 62 and 63 were objected to, but indicated allowable if rewritten. Claims 1-33 were previously cancelled. Applicants respectfully request favorable reconsideration for the reasons below.

### **Amendments to the Claims**

Claim 58 is currently amended to include limitations from Claim 59 and to replace the recitation of "Claim 35" with the limitations recited by Claim 35.

Claims 59 and 60 are cancelled without disclaimer so that allowed subject matter may issue.

Claim 61 is cancelled without disclaimer so that allowed subject matter may issue.

Allowable Claim 63 is amended to replace the recitation of "Claim 35" with the limitations recited by Claim 35.

New Claim 64 is added to rewrite allowable dependent Claim 62 in independent format, including the limitations recited by Claim 35. Claim 62 is cancelled.

New Claim 65 is added to recite a process for preparing the crystalline Form of Claim 34. Support for this claim may be found, inter alia, on page 6, line 23 – page 7, line 9.

New Claims 66-67 are currently added to further limit Claim 34.

The above amendments are made without disclaimer in an effort to advance the prosecution of the instant case. Applicants reserve the right to file continuation applications directed to any of the canceled or amended subject matter.

Applicants respectfully submit that no new matter is added.

### **35 U.S.C. §112 Rejections**

Claims 58 and 61 were rejected under 35 U.S.C. §112, first paragraph, for lack of enablement. Claims 58 and 61 are currently cancelled without disclaimer, in the interest of advancing prosecution.

### **35 U.S.C. §102 Rejections**

Claim 34 was rejected under 35 U.S.C. §102 as being inherently anticipated by Lohray et al. (WO 97/41067; "Lohray"). The Office notes that Lohray discloses a potassium salt having a melting point of 302° C on page 89 (Lohray's Example 41). Applicants direct the Office's attention to Applicants' page 5, lines 11-15 of the application, which states that the instantly claimed invention has a different DSC profile, different XRD profile and a different IR than the compound disclosed by Lohray's Example 41. For at least this reason, favorable reconsideration of Claim 34 and new Claims 65-67 is requested.

Claims 35-57 are rejected under 35 U.S.C. §102 as being inherently anticipated by Lohray and under 35 U.S.C. §102 as being inherently anticipated by Chebiyyam et al. (WO 00/15638; "Chebiyyam"). Applicants have cancelled Claims 35-57, without disclaimer, so that the allowed subject matter may issue.

### **35 U.S.C. §103 Rejections**

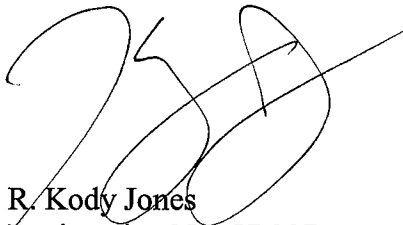
Claims 58-60 were rejected under 35 U.S.C. §103 as being unpatentable over Chebiyyam. Specifically, the Office contends that Chebiyyam's Example 40 describes all essential steps. In an effort to advance the allowed claims to issuance, Claim 58 is currently amended to include limitations from Claim 59 that are clearly not disclosed by the reference. For at least this reason, favorable reconsideration is requested.

### **Conclusion**

Applicants respectfully note that because Applicants have addressed certain comments of the Office does not mean that Applicants concede other comments of the Office. Further, the fact that Applicants have made arguments for the patentability of some claims does not mean

there are not other good reasons for the patentability of those or other claims. Applicants also believe that by this amendment, the case is placed in condition for allowance and such action is respectfully requested. If, however, any issues remain unresolved, Applicants' representative would welcome the opportunity for a telephone interview to expedite allowance and issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Kody Jones', is written over the typed name.

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